

Exhibit 34



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

4 NETLIST, INC., (CAUSE NO. 2:21-CV-463-JRG
5)
6 Plaintiff, ()
7 vs. ()
8)
9 SAMSUNG ELECTRONICS CO., LTD., ()
10 et al.,) MARSHALL, TEXAS
11 (MARCH 28, 2023
12 Defendants.) 9:00 A.M.
13

14 VOLUME 1
15

16 PRETRIAL CONFERENCE
17

18 BEFORE THE HONORABLE RODNEY GILSTRAP
19 UNITED STATES CHIEF DISTRICT JUDGE
20

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1 THE COURT: Be seated, please.

2 This is the time set for pretrial matters before the
3 Court in the case of Netlist, Inc., versus Samsung Electronics
4 Company, Ltd., et al. This is Civil Case No. 2:21-CV-463.

5 The Court will ask for announcements at this time. What
6 says the Plaintiff?

7 MS. TRUELOVE: Good morning, Your Honor. Jennifer
8 Truelove here for Plaintiff. With me today at counsel table,
9 we have Mr. Jason Sheasby, Ms. Yanan Zhao, and Mr. Michael
10 Rosen.

11 We are ready to proceed.

12 THE COURT: Thank you.

13 What's the announcement for the Samsung Defendants?

14 MS. SMITH: Good morning, Your Honor. Melissa Smith
15 on behalf of Samsung.

16 I have many people in the courtroom that have joined me
17 today, but what I'd like to do is introduce Your Honor to
18 those that will be arguing today on behalf of Samsung in the
19 order of argument: Mr. Ruffin Cordell, Mr. Mike McKeon, Ms.
20 Lauren Degnan, Dr. Frank Albert, Mr. Brian Livedalen, Mr. Matt
21 Colvin, Mr. Matthew Mosteller, Mr. Tom Reger, and in the back
22 Ms. Katherine Reardon.

23 Your Honor, we also have a client representative in the
24 courtroom today, Mr. Michael Nguyen, and we're ready to
25 proceed, Your Honor.

1 you know, as we're working together, it's just sort of a
2 sharing of information. It was not obviously accusing anyone
3 of infringement because we were licensed.

4 THE COURT: All right. Now, if you consider the
5 Court's prior ruling that up to the termination of the JDLA on
6 July the 15th, 2020, Samsung was licensed pursuant to the
7 terms of the JDLA, then we're not talking about willful
8 infringement prior to July 15th, 2020, under any scenario.

9 Is that your understanding?

10 MS. DEGNAN: You are absolutely right, Your Honor.

11 Could we have slide 27? There's a timeline I think --

12 THE COURT: So really we're talking about 2020 until
13 suit's filed.

14 MS. DEGNAN: We are. And so let's just jump into
15 this, what is the good faith defense, because that is, of
16 course, a reason that would prevent a willful finding here.
17 And we think no reasonable juror could find we're willful
18 infringers given -- given this license. So, yes, certainly
19 through the termination on July 15th, 2020.

20 But I think it's important to recognize is that between
21 July 15th, 2020, and the final judgment in the California
22 case, this was a hotly-disputed issue. They were claiming
23 termination, we were saying it was unlawful, we thought the
24 termination even if there was a breach, it was not material
25 justifying termination.

1 So during this period of time, subjective intent was of
2 -- of Samsung was that we are being wrongfully denied our
3 license and we're fighting to keep it.

4 And during this period, we should point out that there
5 was a jury trial, and the jury awarded on December 3rd, 2021,
6 no damages for this breach that Netlist said happened. That,
7 again, looks like it's not material. If there's no damages,
8 then there shouldn't have been a termination.

9 And so we would say that this entire period through at
10 least the end of the action in California, no reasonable juror
11 could find that we were -- had the subjective intent to
12 deliberately infringe because we had a license, we were
13 fighting to prevent Netlist from taking it away during that
14 entire period.

15 And I would submit even after, while we appealed what we
16 would consider a miscarriage of justice, to the Ninth Circuit
17 we still had a good faith belief that, you know, we have been
18 denied a license that we bought and paid for, it was a
19 perpetual license, and that that prevents any sort of
20 reasonable jury from finding infringement both pre- and
21 post-suit.

22 THE COURT: Let me go back a minute since you've got
23 this timeline on the screen.

24 Now, I don't want to limit or backtrack on my prior
25 statement that, during the period of licensure, Samsung really

1 can't infringe if they're licensed, and if they can't
2 infringe, they can't willfully infringe.

3 But I have left open the issue for the jury to decide
4 whether these HBM products are foundry products which would
5 not be covered by the license and, therefore, could be subject
6 to infringement. And if those can be subject to infringement
7 under that construction or scenario, then there's potentially
8 willful infringement.

9 So as to what's covered by the license prior to 2020, I'm
10 satisfied that willfulness is out. What's not covered by the
11 license prior to 2020 is fair game for willfulness. And then
12 we had the issue of post-July 15, 2020, up until the time
13 suit's filed.

14 And I understand your arguments about your sense of
15 justice in the Central District of California and the Ninth
16 Circuit. You are entitled to your opinions. I'm not sure
17 that's dispositive on the issue of willfulness or not.

18 MS. DEGNAN: So let me just respond to this issue of
19 products that were foundry products. And so I think what -- I
20 think what we're going to see --

21 THE COURT: I can see that fight coming.

22 MS. DEGNAN: I can see --

23 THE COURT: I think everybody in the room can see
24 that fight coming.

25 MS. DEGNAN: But to clarify, it's not really the

1 rea subjective intent to infringe patents that hadn't even
2 issued during the negotiations and the license for the JDLA.

3 So you can't tie this activity that they spent many
4 minutes showing you in the slides to the mens rea requirement
5 post-termination of the license. So there's nothing that
6 springs back into effect at that time.

7 And so it's my way of explaining why all the slides you
8 just looked at, all those evidence, is actually not relevant
9 to the issue of willfulness because those patents had not
10 issued. And by the time they had issued, even if there was
11 some desire to license a patent that was in existence in 2015,
12 that does not mean we had the subjective intent to infringe
13 completely different patents in 2020.

14 So I guess I'll leave it with that. That's sort of high
15 level response to counsel's remarks.

16 THE COURT: All right. Thank you, Counsel.

17 All right. With regard to Document 200 and Samsung's
18 motion for summary judgment of no willfulness, as to the
19 period prior to July 15th, 2020, and as to what was covered by
20 the license granted through the JDLA, the Court grants summary
21 judgment that there was no willful infringement during the
22 period that whatever was licensed by the JDLA remained
23 licensed by the JDLA up until and through or as of July 15th,
24 2020.

25 Post-July 15th, 2020, the Court finds that there are

1 previously set on the 17th. Go back 10 days and you get to
2 the 7th. We're now on the 14th. Go back 10 days, and you get
3 to the 4th. So the first step in that process should be on
4 the 4th and not the 7th. The second one should follow, what
5 is it, three days later?

6 MR. CORDELL: Yes, sir.

7 THE COURT: That would put it on the 7th. So 4th
8 and the 7th instead of 7th and the 10th.

9 All right?

10 MR. CORDELL: Thank you.

11 MR. SHEASBY: Thank you, Your Honor.

12 THE COURT: All right, Counsel. We stand in recess
13 until tomorrow morning.

14 MR. SHEASBY: Thank you, Your Honor.

15 (The proceedings were concluded at 5:15 p.m.)

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